

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**HEDY M. MENDENHALL**

## Claimant

VS.

# PIONEER BALLOON COMPANY

Respondent

AND

# LEGION INSURANCE COMPANY

Insurance Carrier

Docket No. 227,157

## ORDER

Respondent and its insurance carrier appealed the Award dated February 17, 1999, entered by Administrative Law Judge Nelsonna Potts Barnes. The Appeals Board heard oral argument in Wichita, Kansas, on August 13, 1999.

## APPEARANCES

James B. Zongker of Wichita, Kansas, appeared for the claimant. Vincent A. Burnett of Wichita, Kansas, appeared for the respondent and its insurance carrier.

## RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

## ISSUES

This is a claim for an April 30, 1997 accident, which allegedly resulted in injuries to claimant's right leg, right hip, back and groin. After averaging the ratings of three doctors, the Judge found that claimant sustained a three percent whole body functional impairment for injuries to the right hip, an additional one percent whole body functional impairment for deep vein thrombosis in the right leg, and an additional 16 percent whole body functional impairment for lumbar strain. Combining those impairment ratings, the Judge awarded claimant a 19 percent permanent partial general disability.

The respondent and its insurance carrier contend the Judge erred by finding that the April 1997 accident injured or aggravated claimant's back. They argue that claimant failed to prove that her back problems were related to the April 1997 accident. They argue, in the alternative, that the Judge erred by giving any weight to Dr. Murati's opinion of functional impairment to the back and that the Judge, at the very least, should have averaged Dr. Veenis' zero percent rating with Dr. Murati's 16 percent rating in determining the functional impairment to the back.

The only issues before the Board on this appeal are:

- (1) Did claimant prove she injured her back as a direct result of the April 1997 accident?
- (2) What is the nature and extent of claimant's injury and disability?

#### **FINDINGS OF FACT**

After reviewing the entire record, the Appeals Board finds:

1. On April 30, 1997, Ms. Mendenhall tripped and fell at work fracturing her right hip. As a result of the hip fracture, Ms. Mendenhall began to limp. And in May 1997, her back began to hurt. The Board concludes that Ms. Mendenhall's back was aggravated by her limp to the extent it is now symptomatic and causing functional impairment.
2. The record contains impairment ratings from three physicians. All three doctors rated the functional impairment to the right hip. But only one doctor testified that Ms. Mendenhall sustained impairment to her back.

Dr. Blake C. Veenis testified that Ms. Mendenhall had a four percent whole body functional impairment for the hip injury and the deep vein thrombosis in the right leg. Although he diagnosed mechanical low back pain that was directly related to the hip injury, Dr. Veenis did not think that Ms. Mendenhall sustained any permanent impairment to her back.

Dr. Bruce Buhr testified that Ms. Mendenhall had a one percent whole body functional impairment due to the hip fracture. The doctor had no opinion whether Ms. Mendenhall's back pain was related to the April 1997 accident, although he acknowledged it would be consistent with what he knows about her back. Dr. Buhr was not asked if Ms. Mendenhall was impaired due to her back.

Finally, Dr. Pedro A. Murati testified that Ms. Mendenhall sustained a six percent whole body functional impairment to the right lower extremity and a 16 percent whole body functional impairment to the back as a result of the April 1997 accident and resulting injuries.

**CONCLUSIONS OF LAW**

1. The Award should be affirmed.
2. An accidental injury is compensable even where the accident only serves to aggravate a preexisting condition.<sup>1</sup> The test is not whether the accident causes the condition, but whether the accident aggravates or accelerates the condition.<sup>2</sup> And every natural and direct consequence that flows from a compensable injury is also compensable under the Workers Compensation Act.<sup>3</sup>
3. The Board concludes that Ms. Mendenhall sustained personal injury by accident arising out of and in the course of her employment with Pioneer Balloon Company on April 30, 1997. The hip fracture caused Ms. Mendenhall to limp which, in turn, aggravated degenerative disc disease in her back. Because the impairment to the back is the natural consequence of the hip fracture, it is also compensable under the Workers Compensation Act.
4. On appeal, the respondent and its insurance carrier argue that the Judge should have given weight to Dr. Veenis' opinion that Ms. Mendenhall has no functional impairment to her back. The Judge found that Ms. Mendenhall had sustained impairment to her back as a result of this accident and the Appeals Board agrees. Based upon that conclusion, it is reasonable not to give weight to a rating of zero percent. Therefore, the Board affirms the Judge's conclusion that Ms. Mendenhall has a three percent whole body functional impairment for her right hip fracture, a one percent whole body functional impairment for the deep vein thrombosis in her right leg, and a 16 percent whole body functional impairment for the aggravation to her back, all of which combine for a 19 percent whole body functional impairment.
5. Because Ms. Mendenhall has returned to work for Pioneer Balloon Company, there is no claim at this time for a permanent partial general disability greater than the functional impairment rating. Therefore, Ms. Mendenhall is entitled to receive an award for a 19 percent permanent partial general disability.
6. The Appeals Board adopts the findings and conclusions set forth in the Award.

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<sup>1</sup> Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971).

<sup>2</sup> Woodward v. Beech Aircraft Corporation, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

<sup>3</sup> Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972).

**AWARD**

**WHEREFORE**, the Appeals Board affirms the February 17, 1999 Award entered by Judge Nelsonna Potts Barnes.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: James B. Zongker, Wichita, KS  
Vincent A. Burnett, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director